S.B. Civil Writ Petition NO.4567/2004

Dhokal Ram Vs. State of Rajasthan & Anr.

Date of Order : 06-12-2004

HON'BLE MR. PRAKASH TATIA,J.

Mr. D.R. Gurjar, for the petitioner.

Mr. L.R. Upadhyay, for the respondents.

Heard learned counsel for the parties.

Brief facts of the case are that the petitioner was appointed on the post of Cattle Guard in the Forest Department. The petitioner submitted the Janampatri in proof of his date of birth at the time of his initial appointment which discloses the date of birth as 16.4.1952. According to petitioner, this date was entered in the service record which is evident from the various documents of the respondents themselves which was continued till he got the retirement order (Annex.6) dated 31.7.2004. From the order dated 31.7.2004, for the first time he came to know that petitioner's date of birth which was recorded in service record is not being accepted by the respondent department and they passed the order to retire the petitioner on attaining the age of superannuation by treating petitioner's date of birth as 7.11.1944.

According to learned counsel for the petitioner, no notice was given to the petitioner before making any change in the date of birth of the petitioner by the respondent in petitioner's service record. Learned counsel for the petitioner submits that once date of birth is accepted by employer, it cannot be changed by the employer without affording any opportunity of hearing to the employee. Learned counsel for the petitioner places reliance upon the judgment of Hon'ble Supreme Court delivered in the case of Union of India & Ors. Vs. C. Ramaswami & Ors. reported in 1997 (4) SCC 647 and judgment of this Court delivered in the case of Inder Singh Vs. State of Rajasthan & Anr. (SBCWP No.3845/2000) decided on 11.7.2001.

Learned counsel for the respondents submits that the petitioner submitted form at the time of his initial appointment wherein he disclosed his date of birth as Samvat Year, 2009 below which there is a mention of date as 1.5.1955. The petitioner submitted an affidavit dated 29.12.1992 wherein petitioner disclosed the date of birth as 1.1.1955. In view of the different date of births given by the petitioner, the respondent department decided to inquire into the matter and referred the matter to the Medical Board in the year 1996 by order dated 24.9.1996 (Annex.R/3). According to learned counsel for the respondents, the respondents received the report from the

Medical Board which opined that the petitioner's age in the year 1996 appears to be 52 years. After getting this report, the correction was made in the service record which is evident from the copy of the service record placed on record of this petition as Annexure-R/5. In view of the above, Annexure-6 was issued to the petitioner as he attained the age of superannuation on 7.11.2004 and he was asked to retire on the last date of the month by Annexure-6.

I considered the submissions of learned counsel for the parties and perused the record.

It appears from the service record provided for perusal of this Court that in service record, the petitioner's date of birth has been mentioned clearly as 16.4.1952. The respondent department accepted the petitioner's date of birth as 16.4.1952 and this position continued thereafter. The respondent issued various orders like Annex.2, Annex.3, Annex.4 by giving date of birth of petitioner 16.4.1952. The petitioner also placed on record the copy issued by the State Insurance of the State wherein the date of birth of the petitioner is given as 16.4.1952.

In view of the above documentary evidence and in view of the facts of the case that the petitioner's date of birth was accepted as 15.4.1952, the respondent could not have altered the date of birth of the petitioner without

holding an enquiry and without giving notice to the petitioner. It appears from the reply to the writ petition that petitioner gave his date of birth in his application form Annex.R/1 as Samvat Year 2009, this clearly reveals that petitioner might not be knowing the exact date of birth at the time of filling of the said form. But undisputedly, he produced the copy of his Janampatri which contains the petitioner's date of birth as 16.4.1952. So far as contention of learned counsel for the respondents that they referred the matter to the Medical Board is concerned, it appears that the matter was referred to the Medical Board on 24.9.1996 despite the fact that petitioner submitted his application for appointment to the post long ago and his affidavit declaring his date of birth as 1.1.1955 was also submitted before taking decision by the Medical Board. It appears from the Annex.R/4 that the Medical Board opined that petitioner's age may be 52 years in the year 1996. But from the entire service record and reply it has not come out that that medical report was even shown to the petitioner and any notice was given to the petitioner for initiating any proceeding for correction of the date of birth of the petitioner on the basis of the said medical report. It appears from the service record that there is a note appended by the Deputy Conservator, Forest that in view of the Medical Board's report dated 7.11.1996, petitioner's date of birth is held to be 7.11.1944. There is no date mentioned for this year but the

Officer Incharge assisting the learned counsel for the respondent stated that this prejudice was upto the year 2000, therefore, it must have been recorded before the year 2000. But the fact remains is that no notice for taking any action on the basis of the medical report was given to the petitioner and the medical report was accepted by the respondent department without giving any notice to the petitioner and without giving opportunity to the petitioner to produce any evidence for this purpose.

In view of the above, it is clear that petitioner's date of birth originally recorded was 16.4.1952 and it was changed by the respondent department without giving any notice to the petitioner, therefore, in view of the judgment relied upon by the learned counsel for the petitioner, the petition deserves to be allowed, hence allowed and the order retiring the petitioner dated 31.7.2004 is set aside. The respondents are directed to accept the date of birth of the petitioner as 16.4.1952 and the petitioner shall be reinstated forthwith as the order of retiring him was never passed.

[PRAKASH TATIA],J.

Praveen